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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Plumas)

THE PEOPLE,

Plaintiff and Respondent,

v.

SCOTT EVERETT PAPENHAUSEN,

Defendant and Appellant.

C078640

(Super. Ct. No.
CRF 11-01081)

OPINION ON TRANSFER

Defendant Scott Everett Papenhausen appeals from the trial court's orders denying his petition to resentence him on a prior prison term enhancement (Pen. Code,¹ § 667.5, subd. (b)) pursuant to section 1170.18. He contends that designating as a misdemeanor the prior felony conviction that forms the basis of a prior prison term enhancement invalidates that enhancement. We originally held the prison prior remained valid.

¹ Undesignated statutory references are to the Penal Code.

Thereafter, the Supreme Court granted defendant's petition for review and ultimately transferred the case with directions for this court to vacate our prior decision and to reconsider the cause in light of the recently decided *People v. Buycks* (2018) 5 Cal.5th 857 (*Buycks*). Applying *Buycks*, we conclude the prison prior is invalid.

BACKGROUND²

A jury convicted defendant of selling or furnishing methamphetamine (Health & Saf. Code, § 11379, subd. (a)), possession of methamphetamine (Health & Saf. Code, former § 11377, subd. (a)), and misdemeanor resisting on officer (§ 148, subd. (a)(1)) and sustained an enhancement for personal use of a deadly or dangerous weapon (§ 12022, subd. (b)(1)). (*People v. Papenhausen* (June 7, 2013, C071602) [nonpub. opn.] (*Papenhausen*).) Defendant admitted allegations of two prior prison terms and a prior drug conviction (Health & Saf. Code, § 11370.2), and the trial court sentenced him to nine years in state prison and six months in county jail. (*Papenhausen, supra*, C071602.) The prior prison term enhancements were based on a 2006 conviction for possession of a controlled substance and a 2004 Nevada conviction for a similar offense. (Nev. Rev. Stat. 453.337 (1997).)

Defendant filed a petition for resentencing requesting resentencing on the possession of methamphetamine count and on the prior prison term enhancements. The trial court reduced the possession of methamphetamine count to a misdemeanor, struck the enhancement for use of a deadly or dangerous weapon attached to that count, modified the sentence on that count to a consecutive term of eight months in county jail, denied resentencing on the prior prison terms, and modified the sentence on the other counts to a county jail term (§ 1170, subd. (h)(6)), for a total term of nine years two months in county jail.

² We dispense with the facts of defendant's crimes as they are unnecessary to resolve this appeal.

DISCUSSION

Defendant contends that he is entitled to resentencing on the prior prison term enhancement that was based on his prior conviction for possession of a controlled substance, as that offense is now a misdemeanor following the passage of Proposition 47.

Proposition 47, the Safe Neighborhoods and Schools Act (Act), which was enacted three days before the second sentencing hearing, requires “misdemeanors instead of felonies for nonserious, nonviolent crimes . . . unless the defendant has prior convictions for specified violent or serious crimes.” (Voter Information Guide, Gen. Elec. (Nov. 4, 2014) text of Prop. 47, § 14, pp. 73-74.) Among the affected crimes is possession of a controlled substance, which is now a misdemeanor barring certain exceptions not relevant here. (See Health & Saf. Code, § 11377.) Since the prior prison term enhancement requires that defendant was convicted of a felony and served a prison term for that conviction (§ 667.5, subd. (b)), this raises the question of whether a prior prison term enhancement based on what is now a misdemeanor conviction survives the Act.

The Supreme Court held in *Buycks* that “a successful Proposition 47 petitioner may subsequently challenge, under subdivision (k) of section 1170.18, any felony-based enhancement that is based on that previously designated felony, now reduced to misdemeanor, so long as the judgment containing the enhancement was not final when Proposition 47 took effect. In addition, finality aside, a defendant who successfully petitions for resentencing on a current Proposition 47 eligible conviction may, at the time of resentencing, challenge a felony-based enhancement contained in the same judgment because the prior felony conviction on which it was based has since been reduced to a misdemeanor.” (*Buycks, supra*, 5 Cal.5th at p. 879.) This applies to prior prison term enhancements; a prison prior based on a felony reduced to a misdemeanor pursuant to Proposition 47 is not valid. (See *id.* at p. 888.) While defendant’s conviction was final before Proposition 47 was enacted, his successful section 1170.18 resentencing petition

as to the possession of methamphetamine count meant, under *Buycks*, that he was entitled to resentencing on the entire case, and therefore, the prison prior was no longer valid. We shall reverse the order denying the petition as to the prison prior and remand for additional proceedings consistent with this opinion.

DISPOSITION

The judgment (order denying defendant's petition) as to the prison prior is reversed and the matter is remanded for proceedings consistent with this opinion.

/s/
Blease, Acting P. J.

We concur:

/s/
Hoch, J.

/s/
Renner, J.